

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JONI L. FACER

v.

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration

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C.A. No. 07-438A

MEMORANDUM AND ORDER

This matter is before the Court on the request of Plaintiff Joni L. Facer (“Plaintiff”) for judicial review of the decision of the Defendant Commissioner of the Social Security Administration (the “Commissioner”), denying Plaintiff’s application for Supplemental Security Income (“SSI”) and Social Security Disability Insurance Benefits (“DIB”) under the Social Security Act (the “Act”), 42 U.S.C. § 405(g). On July 11, 2008, Plaintiff filed a Motion for Reversal of the Commissioner’s Non-disability Determination. (Document No. 7). In response, on August 11, 2008, the Commissioner filed a Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the Case. (Document No. 8). Plaintiff has no objection to the request for voluntary remand. Id.

With the consent of the parties, this case has been referred to me for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. Based upon my review of the record and the legal memoranda filed by the parties, the Commissioner’s Motion is GRANTED and the matter is remanded to the Commissioner for further administrative proceedings.

Facts and Travel

Plaintiff is a fifty-one year old woman (Tr. 45) who alleges disability due to degenerative cervical disc disease, myofascial pain syndrome and history of right carpal tunnel syndrome. (Tr. 18).

Plaintiff filed applications for SSI and DIB, which were denied initially (Tr. 31-34) and on reconsideration. (Tr. 37-39). Plaintiff then filed a timely request for a hearing before an administrative law judge (“ALJ”) (Tr. 40) which was held in Providence, Rhode Island on November 29, 2006. (Tr. 348-374). On December 11, 2006, the ALJ issued an unfavorable decision at Step 4 (Tr. 13-22) which Plaintiff appealed to the Appeals Council. On September 28, 2007, the Appeals Council denied Plaintiff’s request for review, thereby rendering the ALJ’s decision the final decision of the Commissioner. (Tr. 5-7).

Plaintiff filed a timely Complaint in this Court on November 30, 2007. Currently pending is the Commissioner’s Unopposed Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the Case. (Document No. 8).

Discussion

According to sentence four of Section 405(g), 42 U.S.C., “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g).

The Commissioner requests that the matter be remanded for rehearing so that the ALJ may determine whether the Plaintiff’s work as a secretary was substantial gainful activity for proper use at Step 4 and ensure that all descriptions of Plaintiff’s past work conform with the testimony of the

Vocational Expert. The Commissioner further indicates that if the requirements of past work exceeds Plaintiff's RFC, then the ALJ shall conduct a Step 5 analysis.

Conclusion

For the foregoing reasons, the Commissioner's Motion for Entry of Judgment Under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the Case (Document No. 8) is GRANTED and the matter remanded to the Commissioner for further administrative proceedings as detailed above. The Clerk shall enter Final Judgment for Plaintiff in accordance with this Reversal and Remand ORDER.

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 13, 2008